

APR - 2 2008

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

RODNEY SMITH

CIVIL ACTION NO. 08-053

versus

JUDGE TRIMBLE

TIM WILKINSON, ET AL

MAGISTRATE JUDGE KIRK

J U D G M E N T

For the reasons contained in the report and recommendation of the magistrate judge [R. 7] previously filed in this case, and after a de novo review of the record, including plaintiff's objection [R. 8] filed in the record, the court finds that the report and recommendation of the magistrate judge is correct under applicable law. Accordingly, it is hereby ORDERED that plaintiff's complaint and all claims contained therein be DISMISSED without prejudice.

Also before the court is a motion [R. 10] filed plaintiff wherein he seeks to amend his original complaint to withdraw his claim for damages under 42 U.S.C. § 1983. Given our adoption of the recommendation of the magistrate judge based on plaintiff's failure to file a habeas action, rather than a civil rights action and his failure to exhaust state court remedies, the court finds that allowing plaintiff to amend his complaint in this way would be futile and accordingly this motion is DENIED as moot.

THUS DONE AND SIGNED in chambers at Alexandria, Louisiana this 2nd day of April, 2008.


JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE